HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.8510 OF 2007

Between:

Shri K.Natarajan

. . .Petitioner

AND

The Station Commander,
Air Force Station, Begumpet, Hyderabad and others

. . .Respondents

:: ORDER ::

Counsel for the petitioner : Shri Ch.Ravinder

Counsel for respondents : Shri A.Rajashekar Reddy,
Assistant Solicitor General

25th April, 2007

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Per G.S.Singhvi, CJ

This petition is directed against order dated 10-10-2006 vide which the Central Administrative Tribunal, Hyderabad Bench (for short, 'the Tribunal') dismissed O.A.No.1186 of 2003 filed by the petitioner for quashing the penalty of reduction of pay imposed on him by the disciplinary authority.

The petitioner was appointed as Group-D Watchman in the year 1972 at Air Force Station, Begumpet. In 1999, a departmental enquiry was instituted against him on the following charges:

ARTICLE I

Shri K. Natarajan perpetually evading the move on T/D to Adilabad Air Field for performance of his trade duties. He willfully defied the lawful authority since -1 May, 99 in gross contravention of Rule 3 (1)(ii) and (iii) of Central Civil Services (Conduct) Rules, 1964.

ARTICLE II

Shri K. Natarajan has absented himself without leave from 27 Aug, 99 and continues to remain absent till date in contravention of Rule 3 (1)(ii) of Central Civil Services (Conduct) Rules, 1964.

ARTICLE III

Shri K. Natarajan is in habit of committed acts of grave misconduct unbecoming of a Government Servant wherein he levelled baseless, unsubstantiated and unsupported allegations against Sqn. Ldr. Vinod Malik, the then Chief Administrative Officer, AF Stn. Begumpet and, Senior Personnel Staff Officer, HQ TC, IAF, Bangalore in gross contravention of Rule 3 (1)(iii) of Central Civil Services (Conduct) Rules, 1964.

ARTICLE IV

Shri K. Natarajan is a habitual offender wherein he has incurred eight penalties on account of various misconducts committed by him

since the year 1991 amounting to unbecoming of a Government Servant in contravention of Rule 3 (1)(iii) of Central Civil Services (Conduct) Rules, 1964.

The statement of imputation of misconduct/misbehaviour served on the petitioner also read as under:

ARTICLE I

That the said Shri K. Natarajan was detailed to proceed on temporary duty to Adilabad airfield for performing the duties of his trade wef 01 May, 99, which he is perpetually evading till date vide BEG/2503/1/P4 dated 22 Jun 99, BEG/2739/2/PC dated 29 Jun 99, BEG/2739/2/PC dated 06 Jul 99, BEG/2506/1/1/P4 dated 07 Jul 99, BEG/2739/2/PC dated 08 Jul 99, BEG/C 1903/17/Org dated 28 Jul 99, BEG/2503/1/1/P4 dated 26 Aug 99, BEG 2756/579/PC dated 30 Aug 99, BEG/2756/579/PC dated 01 Sep 99, BEG/C 2503/1/1/P4 dated 02 Sep 99, BEG/2756/579/PC dated 08 Sep 99 and BEG 2756/579/PC dated 04 Oct 99. In spite of ibid numerous correspondence on subject the said Shri K. Natarajan has not proceeded on T/D to Adilabad Air Field till date. He has neither reported to Station Security Officer for Duty nor has submitted any leave application for regularisation of prolonged unauthorised absence.

ARTICLE II

The said Shri K. Natarajan is absent without leave since 27 Aug 99. He has neither reported to Station Security Section for duty nor has submitted leave application for his unauthorised absence since 27 Aug 99.

ARTICLE III

That the said Shri K. Natarajan in his written representation dated 08 Nov 99, addressed to the Commanding Officer, Air Force Station, Begumpet with copies to SOA, HQ TC, IAF, AOP, Air HQ (VB), Dir of Air Intelligence, Air HQ (VB), Secretary, Ministry of Defence, Government of India, New Delhi and another three addresses levelled baseless, unsubstantiated and unsupported allegations that Sqn Ldr V. Malik has formed a gang of anti-social elements without naming or supplying the names of the members of

such gang. In his same representation, Shri K. Natarajan goes on to state that "I doubt that the SPSO is very much behind this plot." That the said Shri K. Natarajan is in habit of employing an intemperate and insubordinate language against his superiors is evident from the judgment in OA No.1449/98 which he filed against higher Government functionaries like Secretary to the Government, Ministry of Defence, AOC-in-C, HQ TC IAF, Gp. Capt G. Chaturvedi and Sqn Ldr KA Kiran and two SNCOs. To quote from the judgment in OA No. 1449/98 "…… the OA is replete with sweeping allegations against an array of his superiors, vague generalizations, unsubstantiated accusations and unsupported charges against all the respondents on some real or fanciful ground. None of these establish nothing against anyone though they do reveal that the Applicant is apt to be insubordinate and defiant of all authority and discipline --- features of a person's conduct which militate against good order in a highly-disciplined organization like the Air Force. From the OA and its accompaniments, it is evident too that the Applicant is in the habit of employing an intemperate language in his appeals and representations to his superiors."

The petitioner denied the charges and prayed that he may be given opportunity to disprove the same. He also requested that the inquiry may be got conducted by a civilian officer. His last mentioned request was turned down by the disciplinary authority. The officer, who was entrusted inquiry, submitted report with the finding that the charges levelled against the delinquent i.e. the petitioner have been proved. The disciplinary authority accepted the report of inquiry and supplied a copy thereof to the petitioner so as to enable him to submit representation against the findings recorded by the enquiry officer. The latter submitted representation dated 16-5-2002. He not only questioned the procedure adopted by the enquiry officer, but also challenged the findings recorded by him. After considering the same, the disciplinary authority passed order dated 6-6-2002 whereby penalty of reduction of pay from Rs.3345/- to Rs.2610/- in the time-

scale of Rs.2610 – Rs.3540 was imposed on the petitioner for a period of 5 years with a stipulation that he will not earn increment during that period and the penalty will have the effect of postponing his future increments. The appeal preferred by the petitioner against the order of punishment was dismissed by the Appellate Authority vide its order dated 20-12-2002, the relevant portions of which are extracted below:

"3. AND WHEREAS, comments of the Stn. Cdr, AF Stn, Begumpet, were sought on the said appeal. The original records in the case were called for from AF Stn, Begumpet and examined. Each issue raised by Shri K. Natarajan in his abovesaid appeal has been carefully considered and examined. From an examination of the issues raised in the appeal vis-à-vis the inquiry proceedings and the facts on records in the case, I arrive at the following conclusions on the various issues contained in the appeal:

(a) **Punishment order is Not a Speaking Order:** The records have been examined and it is revealed therefrom that the disciplinary authority had deliberated in detail the representation dated 16 May 2002 submitted by Shri K. Natarajan. Each point raised by Shri K. Natarajan in his said representation is found to have been analysed and considered by the disciplinary authority judiciously before arriving at a decision as regards the penalty imposed on him. It is also seen that the Disciplinary authority had concurred with the findings of the inquiry officer. It is also on record that before deciding the penalty, a personal hearing to Shri K. Natrajan was given by the disciplinary authority. The order of the Disciplinary authority communicating the punishment also states that the Disciplinary authority had considered the said representation of Shri K. Natrajan and found that contentions contained therein were not tenable. In these circumstances, I consider that the Disciplinary authority had applied its mind to all the contentions raised in the above said representation of Shri K. Natrajan before imposing the penalty on him and the punishment order contains an annotation to that effect.

(b). **The Inquiry Officers were biased** From the appeal memo, the grounds on which Shri K. Natrajan deemed the inquiry officers to be biased, are not apparent. However, from the records, it appears that

Shri K. Natrajan had submitted a representation to the Stn. Cdr, AF Stn, Begumpet on 31 JaN 2000, wherein he had alleged bias against the then inquiry officer, Sqn. Ldr. KRRK Raja (Exh. 'B' in the inquiry proceedings). The then SOA, HQ TC, IAF, being the appellate authority, had considered his said representation and after examining the same vis-à-vis the reply of the Stn. Cdr thereupon, had arrived at a conclusion that the allegations of 'Bias' leveled by shri K. Natrajan against the said inquiry officer were baseless and unsubstantiated and, therefore, Sqn Ldr KRRK Raja was allowed to continue as the inquiry officer. The said order of the appellate authority in this regard was communicated to Shri K. Natrajan (EXH 'C' in the inquiry proceedings). Thereafter, the inquiry had resumed, but, in the meantime, Sqn Ldr KRRK Raja was posted out to 505 SU, AF, wef 21 Jun 2001, therefore, Sqn Ldr Ravi Sharma was appointed the new inquiry officer by the disciplinary authority. On 13 Feb 02, Shri K. Natrajan submitted another petition to the Disciplinary authority leveling allegation of 'Bias' against Sqn Ldr Ravi Sharma (EXH 'CU'). The Stn Cdr, AF Stn, Begumpet, had considered the said representation and rejected all the allegations being devoid of any substance and Shri Natrajan was informed accordingly (EXH 'CV'. The said action of the disciplinary authority was proper. I have examined the inquiry proceedings and find that the inquiry officers had conducted the inquiry as per Rules and none of their actions reflect any kind of 'Bias' against Shri K. Natrajan. Therefore, I find no substance in this contention.

(c) **Presenting Officers were changed without justified reasons**

Shri B Balram, UDC, was initially appointed as the Presenting officer and later replaced by Shri M. Divakar Rao on 23 Nov 01 as Shri Balram was unavoidably absent. The said change was effected through an appropriate order to the inquiry officer under intimation to Shri K. Natrajan. On 11 Dec 01, Shri Radhakrishnan was appointed as the new Presenting officer by the Disciplinary authority. Such a change in the Presenting officers due to service exigencies is permissible. Shri K. Natrajan has not shown either during the inquiry or in the appeal as to how the change in the Presenting officer caused any prejudice to him during the inquiry. The contention of the appellant that the next Presenting officer was not eligible to act as the Presenting Officer because of his presence while examining PW-3, is vague as it does not indicate which Presenting officer was present

during the examination of PW-3. Moreover, Daily order sheets of the relevant days do not reflect any objection by Shri K. Natrajan or the Defence Assistant as to the appointment of the new Presenting officer(s). It is, therefore, obvious that change in the Presenting officers did not cause any prejudice to Shri K. Natrajan.

(d) **Inquiry not held as per Rule 14 of the CCS (CCA) Rules** Shri K. Natrajan has submitted in the appeal that during the inquiry, Rules were violated at every stage and the inquiry was not conducted as per Rule 14 of the CCS (CCA) Rules, 1965. In this regard, he mainly brought out the following:

(i) He was asked to give a detailed statement on the very first day of his appearance before the inquiry officer;

(ii) He was not provided an opportunity to summon additional documents and witnesses;

(iii) He was not given an opportunity to submit his defence statement or to appear as his own witness; and

(iv) He was not generally questioned by the inquiry officer which is mandatory.

(e) Per contra, an examination of the inquiry proceedings reveals that the inquiry was conducted as per the Rules and Shri K. Natrajan was provided with much more latitude in carrying out his defence than prescribed under the Rules. Though he was asked by the inquiry officer at the commencement of the inquiry proceedings if he wanted to make a statement, but he did not make any statement and nor did the inquiry officer insisted to have such a statement. No prejudice, whatsoever, has been caused to Shri Natrajan on this account. Regarding the contention that Shri K Natrajan was not provided opportunity to summon witnesses and documents, the inquiry proceedings reveal that on 29 Jan 2000, he had submitted a request to the inquiry officer (EXH 'N' in the inquiry proceedings) for handing over of four documents to him for the purpose of preparing his defence. Thereupon, Shri K. Natrajan was advised that only the Xerox copies of the said documents relevant to the inquiry will be provided. Thereafter, there is no representation on record to show that the abovesaid or any other document was not made available to him during the inquiry. Even in his written brief (closing address) Shri Natrajan did not raise any plea that the documents necessary for his defence were not provided. As regards the summoning of witnesses,

it is revealed from the inquiry proceedings that on 19 Novem and 03 Dec 01, Shri K. Natrajan had made a request to the inquiry officer for summoning of some witnesses as state witnesses (EXH 'AY' & 'BG'). The said request was disposed of by the inquiry officer on 12 Dec 01 (EXH 'BR') by informing him that he cannot insist upon the summoning of state witnesses as it is the prerogative of the Presenting officer to call or not to call any person as a state witness. However, Shri K Natrajan was also informed by the inquiry officer that he was free to call any person as a defence witness and any such request would be considered favourably. Thereafter, the Defence Assistant, through his representation dated 14 Dec 01 (EXH 'BU') requested the inquiry officer to permit him to be a defence witness. In the said representation, he also stated that other than himself, he did not wish to produce anybody else as a defence witness. Thereafter, nowhere in the inquiry proceedings, a request is seen for the examination of any other defence witness. In his written brief also, Shri K Natrajan did not state about the non-acceptance of the request for examination of any defence witness. It is obvious that this ground of appeal is also contrary to the material on record in the inquiry proceedings. Regarding the contention stated at Para 3 (d)(iii) ibid, it is found that Shri K Natrajan appeared as a witness and also made a statement during the inquiry proceedings and, therefore, his said contention is also not substantiated by the facts on record.

(f) As regards the contention that Shri K. Natrajan was not generally questioned by the inquiry officer after the close of the defence case, which is mandatory, Rule 14 (18) of the CCS (CCA) Rules says, 'the inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing against him". The inquiry proceedings reveal that Shri K Natrajan was examined as a witness before the inquiry officer. Therefore, the inquiry officer was not under a bounden duty to question him. The action of the inquiry officer was proper and cannot be faulted.

(g) **Sufficient evidence not on record to prove the Articles of charge** At para 4 of his appeal, Shri K Natrajan has stated that even

on merit, there was no case against him justifying the award of punishment. He has stated that he was never relieved by his officer-in-charge, therefore, he could not go on temporary duty to Adilabad. On the contrary, the material on record in the inquiry proceedings indicates that on six different occasions, Shri K Natrajan had received clear instructions from his superiors to proceed on temporary duty to Adilabad, however, he chose not to so proceed. As regards the second articles of charge, Shri K Natrajan has stated that he had submitted medical certificates for a portion of the period of absence alleged and for the remainder of the period, he had reported regularly for duty although he was not allowed to perform his duty. The evidence on record in the inquiry proceedings reveals that from 27 Aug 99 onwards, Shri K Natrajan remained absent from duty till commencement of the inquiry on 24 Jan 2000 and even thereafter. Therefore, this contention is also not tenable. Regarding the third article of charge, Shri K Natrajan has stated that he had brought out the irregularities rampant in the administration not as a watchman, but as General Secretary of the union. His said conduct, therefore, could not have been made the subject matter of an article of charge. The said contention cannot be accepted because the fact of being an office-bearer of an employees' union does not give a licence to write or report false and unsubstantiated allegations against superior officers. As regards the fourth article of charge, Shri K Natrajan has stated that his past misconduct could not have been called in question in the form of an article of charge. This contention is also not tenable, because if the previous bad record, punishment etc. is proposed to be taken into account in determining the question of penalty to be imposed, it should be made a specific charge in the charge-sheet itself. Therefore, the disciplinary authority was perfectly justified in framing a separate article of charge specifying all the past penalties imposed upon Shri K Natrajan.

4. AND WHEREAS, after giving careful consideration to various points and issues raised in the appeal and after examining the inquiry proceedings and original records in the case, I arrive at a conclusion that there is no substance in any of the grounds advanced by Shri K Natrajan in his appeal dated 17Aug 02. I am also satisfied that the procedure laid down in the CCS (CCA) Rules, 1965, was duly complied with during the inquiry and findings of the inquiry officer

were based upon the evidence on the record. I also consider that the penalty imposed on Shri K Natrajan by the Disciplinary authority is adequate."

The petitioner challenged the orders passed by the disciplinary and appellate authorities by filing an application under Section 19 of the Administrative Tribunals Act, 1985 (for short, 'the Act'). He pleaded that the previous punishments could not have been made subject matter of departmental enquiry; that the enquiry was vitiated due to procedural irregularities; that one of the witnesses named in the list supplied along with the charge sheet was not examined and, on that account, he could not elicit truth and that the punishment imposed on him is disproportionate to the misconduct found proved.

The Tribunal rejected all the grounds of challenge and dismissed the application. The Tribunal referred to the judgment of the Supreme Court in **State of Mysore v. Manche Gowda**[1] and held that the purpose of framing Article 4 of the memorandum of charges was to put the applicant (the petitioner herein) on guard about the consideration of his past adverse record and that this was in consonance with the law laid down by the Supreme Court. The Tribunal then noted that the appellate authority has assigned cogent reasons to nullify the order of punishment and held that there was no warrant for nullifying the order of punishment passed by the disciplinary authority only on the ground of lack of reasons. On the issue of non-examination of the witness named in the list supplied by the department, the Tribunal approved the view taken by the Appellate Authority that it was open to the delinquent i.e. the petitioner to summon the witness, who had not been examined by the department. The Tribunal also held that the punishment imposed on the petitioner was not disproportionate to the misconduct found

proved.

Shri Ch. Ravinder reiterated the grounds of challenge taken before the Tribunal and argued that the order of punishment is liable to be quashed because it is totally devoid of reasons. Learned counsel emphasized that the disciplinary authority was duty bound to record reasons and communicate the same to the petitioner so as to enable him to effectively avail the remedy of appeal and argued that failure of the disciplinary authority to comply with this rule is sufficient for invalidation of the order of punishment. He further argued that the defect with which the order of punishment was afflicted cannot be treated as cured merely because the appellate order contains reasons. In the end, he argued that the punishment imposed on the petitioner is wholly disproportionate to the misconduct found proved and, therefore, the Court may substitute the same with lesser penalty.

In our opinion, there is no merit in either of the contentions. It is well known that the High Court's power of judicial review of the disciplinary action against the delinquent employee is very limited. The High Court can interfere with the order of punishment if it is found to be vitiated due to violation of the statutory rules or regulations or the principles of natural justice and such violation is found to have prejudiced the cause of the delinquent. The High Court can also nullify the order of punishment if the finding of guilty recorded by the enquiring/ disciplinary authority is based on no evidence or is influenced by extraneous factors/considerations. The doctrine of proportionality and Wednesbury Rule can be invoked by the High Court if it is convinced that the punishment imposed by the employer is per se arbitrary/capricious or wholly disproportionate to the misconduct found proved. Of course, the last mentioned ground is not available in cases involving fraud, misrepresentation or

misappropriation/embezzlement of public funds.

The parameters for exercise of the High Court's power to issue a writ of certiorari are also well defined. A writ, order or direction can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals or quasi-judicial authorities. A writ can also be issued where in exercise of jurisdiction conferred on it, the Court or the Tribunal or quasi-judicial authority acts illegally or improperly, i.e., it decides a question without giving an opportunity of hearing to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of certiorari is supervisory in nature and not appellate one. This necessarily means that the finding of fact reached by the inferior Court, Tribunal, etc., as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. An error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or quasi-judicial authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of certiorari. A finding of fact recorded by an inferior Court or Tribunal or quasi-judicial authority can be corrected only if it is shown that in recording the said finding, the Court etc., had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as error of law which can be corrected by issuing a writ of

certiorari. However, sufficiency or adequacy of the evidence relied upon by the inferior Court or Tribunal or quasi-judicial authority cannot be gone into by the High Court while considering the prayer for issue of a writ of certiorari. Likewise, mere possibility of forming a different opinion on re-appreciation of evidence produced by the parties is not sufficient for issue of a writ of certiorari.

We may now notice some judicial precedents in which the Supreme Court has laid down guiding principles for exercise of the Court's power of judicial review of disciplinary action taken by the State and its instrumentalities or agencies. In **State of Orissa v. Bidyabhushan Mohapatra**[2], the Supreme Court considered whether the High Court can interfere with the order of punishment simply because finding recorded by the enquiry officer in respect of some charges is found to be vitiated by an error of law and whether it can go into the sufficiency and adequacy of punishment. While reversing the order of Orissa High Court, which had allowed the writ petition filed by the respondent, their Lordships of the Supreme Court observed:

> "But the Court in a case in which an order of dismissal of a public servant is impugned is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an inquiry consistent with the prescribed rules, are not justiciable: nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all of the findings of the Tribunal were 'unassailable', the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed, was final, and the High Court had no jurisdiction to direct the Governor to review the penalty for as we have already observed the order of

dismissal passed by a competent authority on a public servant, if the conditions of the constitutional protection have been complied with, is not justiciable. Therefore if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the inquiry officer or the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice."

In **State of A.P. v. Sree Rama Rao**[3], the Supreme Court indirectly reiterated the proposition laid down in **Bidyabhushan Mohapatra** (supra) and held:

"The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental inquiry against a public servant; it is concerned to determine whether the inquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the inquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of inquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of

the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the inquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding under Article 226 of the Constitution."

In **State of Madras v. G. Sundaram**[4], the Constitution Bench of the Supreme Court laid down the following proposition:

"High Court, in the exercise of its jurisdiction under Article 226 of the Constitution, cannot sit in appeal over the findings of fact recorded by a competent Tribunal in a properly conducted departmental enquiry except when it be shown that the impugned findings were not supported by any evidence. It cannot consider adequacy of that evidence to sustain the charge."

In **State of A.P. v. C. Venkata Rao**[5], a three Judges Bench of the Supreme Court referred to the judgments of **Syed Yakoob v. K.S.Radhakrishnan and others**[6], **Bidyabhushan Mohapatra** (supra) and **Niranjan Singh** (supra) and observed:

"In considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court need not be applied. Even if that rule is not applied by a domestic tribunal in any inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under

> Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal."
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> (Emphasis supplied)

In **B.C. Chaturvedi v. Union of India**[7], the Supreme Court, while considering the appellant's challenge to the order of punishment passed as a sequel to the departmental enquiry held against him, highlighted the limited scope of judicial review by making the following observations:

> "Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are

complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case."

In **Apparel Export Promotion Council v. A.K. Chopra**[8], the Supreme Court again considered the High Court's power to interfere with the disciplinary proceedings and held:

"It is a settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on

facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on *no evidence* or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty.

Further, it is a well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is *not* concerned with the *correctness* of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process.

Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for

that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

In the light of the above stated legal propositions, we shall now consider whether the punishment imposed on the petitioner is vitiated due to violation of the rules of natural justice or any other legal infirmity and the Tribunal committed an error by refusing to nullify the same.

The first question which needs consideration is whether the past adverse record of the petitioner could have been made subject matter of enquiry. In **State of Mysore v. Manche Gowda** (supra), the Supreme Court considered whether the disciplinary authority can consider the past record of the employee without forewarning him. While answering the question in negative, the Supreme Court observed as under:

> "It is suggested that the past record of a Government servant, if it is intended to be relied upon for imposing a punishment, should be made as a specific charge in the first stage of the enquiry itself and if it is not so done, it cannot be relied upon after the enquiry is closed and the report is submitted to the authority entitled to impose the punishment. An enquiry against a Government servant is one continuous process, though for convenience it is done in two stages. The report submitted by the Enquiry Officer is only recommendatory in nature and the final authority which scrutinizes it and imposes punishment is the authority empowered to impose the same. Whether a particular person has a reasonable opportunity or not depends, to some extent, upon the nature of the subject matter of the enquiry. But it is not necessary in this case to decide whether such previous record can be made the subject matter of charge at the first stage of the enquiry. But nothing in law prevents the punishing authority from taking that fact into consideration during the second stage of the enquiry, for essentially it relates more to the domain of punishment rather than to that of guilt. But what

is essential is that the Government servant shall be given a reasonable opportunity to know that fact and meet the same."

The ratio of the above quoted observations is that if the past adverse record of an employee is sought to be used by the employer for imposing any particular penalty, then he must be informed about this and give an opportunity to explain his position. To put it differently, the delinquent must be foretold that his past adverse record or punishments are likely to be taken into consideration for determining the gravity of misconduct and the quantum of punishment. The most convenient method of doing so is to give an indication of the same in the memo of charges. This is precisely what was done in the petitioner's case. Therefore, we see no reason to interfere with the order of punishment only on the ground of consideration of his past record.

The argument of the learned counsel that the order of punishment should be annulled because it does not satisfy the test of a "speaking order" sounds attractive. The requirement of recording of reasons and communication thereof has been treated as an integral part of concept of natural justice which constitutes an important pillar of the system based on rule of law. This has been highlighted in a series of judgments of the Supreme Court in

Harinagar Sugar Mills v. Shyam Sundar[9], M.P.Industries Limited v. Union of India[10], Bhagat Raja v. Union of India[11], Mahavir Prasad Santoshkumar v. State of U.P.[12], Travancore Rayons v. UOI[13], Messrs Ajanta Industries v. Central Board of Direct Taxes, New Delhi[14], Messrs Siemens Engineering & Manufacturing Company v. Union of India[15], S.N. Mukherjee v.

Union of India[16], **Charan Singh v. Healing Touch Hospital**[17] **State of Punjab v. Bagh Singh**[18], **State of Orissa v. Dhaniram Luhar**[19], **State of Rajasthan v. Sohan Lal**[20], **Cyril Lasrado v. Juliana Maria Lasrado**[21], **Mangalore Ganesh Beedi Works v. CIT**[22] and **Manorama Sachan v. Lucknow Development Authority**[23]. In **S.N. Mukherjee v. Union of India** (supra) the Constitution Bench of the Supreme Court noticed the legal position obtaining in Australia, England, United States of America, referred to a large number of judicial precedents on the subject and laid down the following proposition:

> "… Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U. S. A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision

would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case."

In **State of Punjab v. Bagh Singh** (supra) the Supreme Court observed:

> "Reasons introduce clarity in an order. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

In **State of Rajasthan v. Sohan Lal** (supra) the Supreme Court while dealing with the question whether the High Court was required to assign reasons for recording reasons while disposing of petitions filed under Section 378 (3) Cr.P.C. observed:

> "The hallmark of a judgment/order and exercise of judicial power by a judicial forum is to disclose the reasons for its decision and giving of reasons has been always insisted upon as one of the fundamentals of sound administration justice-delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. … The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know of the manner and quality of exercise undertaken, as also the fact that the

court concerned had really applied its mind. All the more so, when refusal of leave to appeal has the effect of foreclosing once and for all a scope for scrutiny of the judgment of the trial court even at the instance and hands of the first appellate court. …"

I n **Cyril Lasrado v. Juliana Maria Lasrado** (supra) the Supreme Court considered the same question and held as under:

"… Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

In **Testeels Limited v. N.M. Desai, Conciliation Officer and another**[24], a Full Bench of the Gujarat High Court made a lucid exposition of law on the subject and we can do no better than to reproduce the relevant paragraphs of that judgment, which are as under:

"There are two strong and cogent reasons why we must insist that every quasi-judicial order must disclose reasons in support of it. The necessity of giving reasons flows as a necessary corollary from the rule of law which constitutes one of the basic principles of our constitutional set-up. Our Constitution posits a welfare State in which every citizen must have justice—social, economic and political and in order to achieve the ideal of welfare State, the State has to perform several functions involving acts of interferences with the free

and unrestricted exercise of private rights. The State is called upon to regulate and control the social and economic life of the citizen in order to establish socio-economic justice and remove the existing imbalance in the socio-economic structure. The State has, therefore, necessarily to entrust diverse functions to administrative authorities which involve making of orders and decisions and performance of acts affecting the rights of individual members of the public. In exercise of some these functions, the administrative authorities are required to act judicially. Now what is involved in a judicial process is well settled and as pointed out by Shah J. in Jaswant Sugar Mills's case, AIR 1963 SC 677 supra, a quasi-judicial decision involves the following three elements:

(1) It is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rules;

(2) It declares rights or imposes upon parties obligations affecting their civil rights; and

(3) The investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of material if a dispute be on question of fact, and if the dispute be on question of law, on the presentation, of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact.

Another reason of equal cogency which weighs with us in spelling out the necessity for giving reasons is based on the power of judicial review which is possessed by the High Court under Article 226 and the Supreme Court under Article 32. The High Court under Article 226 and the Supreme Court under Article 32 have the power to quash by certiorari a quasi-judicial order made by an administrative officer and this power of review exercisable by issue of certiorari can be effectively exercised only if the order is a speaking order and reasons are given in support of it. If no reasons are given, it would not be possible for the High Court or the Supreme Court exercising its power of judicial review to examine whether the administrative

> officer has made any error of law in making the order. It would be the easiest thing for an administrative officer to avoid judicial scrutiny and correction by omitting to give reasons in support of his order. The High Court and the Supreme Court would be powerless to interfere so as to keep the administrative officer within the limits of the law. The result would be that the power of judicial review would be stultified and no redress being available to the citizen, there would be insidious encouragement to arbitrariness and caprice. The power of judicial review is a necessary concomitant of the rule of law and if judicial review is to be made an effective instrument for maintenance of the rule of law, it is necessary that administrative officers discharging quasi-judicial functions must be required to give reasons in support of their orders so that they can be subject to judicial scrutiny and correction."

We may have accepted the contention of the learned counsel by applying the ratio of the decisions referred to hereinabove, but we do not propose to do so because, each of the objections raised by him against the enquiry report has been considered and rejected by the appellate authority by assigning cogent reasons. Indeed, it is not even the petitioner's case that the appellate order suffers from the vice of violation of this facet of the rules of natural justice or that his cause has been prejudiced on account of non-recording of reasons by the disciplinary authority. Therefore, the absence of reasons simplicitor cannot justify invalidation of the punishment imposed by the disciplinary authority. In this context, it is apposite to observe that till early 80's, the Superior Courts had treated violation of the rules of natural justice as sufficient for invalidating administrative and quasi-judicial actions and orders without requiring the petitioner to plead and prove that his cause had been prejudiced on account of such violation. The theory of empty/useless formality was discarded on the premises that violation of the rules of natural justice is itself a

prejudice. This trend has decisively changed in the recent years and, as of now, it is settled law that violation of the rules of natural justice is not sufficient to invalidate the quasi-judicial orders and administrative actions, which visit the petitioner with evil consequences, unless he not only pleads, but also proves that his cause has been prejudiced on account of non-recording of reasons by the concerned authority. In this connection, reference can appropriately be made to the judgments of the Supreme Court in **Janki Nath Sarangi v. State of Orissa**[25], **R.C.Sharma v. Union of India**[26], **Sunil Kumar Banerjee v. State of West Bengal**[27], **K.N. Tripathi v. State Bank of India**[28], **Mumtaz Hussein Ansari v. State of U.P.**[29], **Kashinath Dikshita v. Union of India**[30], **Chandrama Tiwari v. Union of India**[31], **Managing Director, ECIL v. B. Karunakar**[32], **Krishanlal v. State of Jammu and Kashmir**[33], **State Bank of Patiala v. S.K. Sharma**[34], **S.K. Singh v. Central Bank of India**[35], **State of Uttar Pradesh v. Shatrughanlal**[36], **Food Corporation of India v. Padamkumar Bhuvan**[37], **State of Uttar Pradesh v. Harendra Arora**[38], **Oriental Insurance Company v. S. Balakrishnan**[39], **State of Uttar Pradesh v. Rameshchand Manglik**[40]; **Canara Bank v. Debasis Das**[41], **Indra Bhanu Gaur v. Committee, Management of M.M Degree College**[42], **Divisional Manager, Plantation Division A and N Islands v. Munnu Barrick**[43], **Karnataka State**

Road Transport Corporation v. S.G. Kotturappa[44], **Punjab National Bank v. Manjeet Singh**[45], **P.D. Agrawal v. State Bank of India**[46] and Civil Appeal No.4761 of 2006 – **Ashok Kumar Sonkar v. Union of India** decided on February 23, 2007.

In **B. Karunakar's** case (supra) the Constitution Bench of the Supreme Court considered conflicting views expressed in **Union of India v. Mohd. Ramzan Khan**[47] and **K.C. Asthana v. State of Uttar Pradesh**[48] on the interpretation of Article 311(2) of the Constitution (as amended by 42nd amendment). The main question considered by the Constitution Bench was whether report of the enquiry officer is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. The Constitution Bench also considered the following ancillary/incidental questions:

(i) Whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it?

(ii) Whether the report of the Inquiry Officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank?

(iii) Whether the obligation to furnish the report is only when the employee asks for the same or whether it exists even otherwise?

(iv) Whether the law laid down in Mohd. Ramzan Khan's case (supra) will apply to all establishments – Government and non-Government, public and private sector undertakings?

(v) What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases?

(vi) From what date the law requiring furnishing of the report, should come into operation?

(vii) Since the decision in Ramzan Khan's case (supra) has made the law laid down there prospective in operation, i.e. applicable to the orders of punishment passed after 20th November, 1990 on which day the said decision was delivered, this question in turn also raises another question, viz. What was the law prevailing prior to 20th November, 1990?

After answering the main question in affirmative, the Supreme Court considered the ancillary questions and answered above reproduced question No.5 in the following words:

> "The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with backwages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a

perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

The Court further held:

"Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it because coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, [and not any internal appellate or revisional authority', there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment."

I n **Harendra Arora's case** (supra), the Supreme Court referred to the judgment of the Constitution Bench in **B. Karunakar** (supra) and laid down the following propositions:

i) From the case of ECIL it is plain that in cases covered by

the Constitutional mandate i.e. Article 311 (2), non-furnishing of enquiry report would not be fatal to the order of punishment unless prejudice is shown. Therefore, requirement in the statutory rules of furnishing copy of the enquiry report cannot be made to stand on a higher footing by laying down that question of prejudice is not material therein.

ii) Every infraction of the statutory provision could not make the constant action void and/or invalid. The statute may contain certain substantive provisions, e.g. which is the competent authority to impose a particular punishment on a particular employee. Such provision must be directly complied with as in such cases the theory of substantial compliance may not be available. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. Even amongst procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose cases the theory of substantial compliance may not be available, but the question of prejudice may be material. In respect of procedural provisions other than that of fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touch stone of prejudice.

(iii) Even in the CPC there are various provisions viz. Section 99A and 115 besides Order 21, Rule 19 where merely because there is defect, error or irregularity in the order, the same would not be liable to be set aside unless it has prejudicially affected the decision. Likewise, in the Cr.P.C also Section 465 lays down that no finding, sentence or order passed by competent Court shall be upset merely on account of any error, omission or irregularity unless in the opinion of the Court a failure of justice has, in fact, been occasioned thereby. There is no reason why the principle underlying the aforesaid provisions would not apply in case of the statutory provisions of Rule 55-A of the CCS (CCA) Rules in relation to the disciplinary proceedings. Rule 55-A embodies in it nothing but the principles of reasonable opportunity and natural justice."

In **Indra Bhanu Gaur v. Committee, Management of M.M. Degree College** (supra), the Supreme Court considered the question whether non-payment of subsistence allowance could be made a ground for quashing the order of punishment. While remanding the case to the High Court for fresh adjudication, the Supreme Court observed as under:

> "It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso-facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employees handicap because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as an absolute proposition of law that non-payment of subsistence allowance amounts to denial of opportunity of hearing and vitiates the departmental proceedings."

In **Divisional Manager, Plantation Division A and N Islands v. Munnu Barrick** (supra) the Supreme Court held that the principles of natural justice cannot be put in straight jacket formula and in a case involving violation of the rules of natural justice, the Court can insist upon proof of prejudice before setting aside the order impugned before it. The Supreme Court further held that the Court may invoke "useless formality theory" and decline to interfere with the order under challenge if the petitioner fails to prove prejudice.

In **Karnataka State Road Transport Corporation v. S.G. Kotturappa** (supra), the Supreme Court held:

> "The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be put in any straitjacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality. What is needed for the employer in

a case of this nature is to apply the objective criteria for arriving at the subjective satisfaction. If the criteria required for arriving at an objective satisfaction stands fulfilled, the principles of natural justice may not have to be complied with, in view of the fact that the same stood complied with before imposing punishments upon the respondents on each occasion and, thus, the respondents, therefore, could not have improved their stand even if a further opportunity was given"

In **Punjab National Bank v. Manjeet Singh** (supra), the Supreme Court opined as under:

"The principles of natural justice were also not required to be complied with as the same would have been an empty formality. The court will not insist on compliance with the principles of natural justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principle of natural justice."

In **P.D. Agarwal v. State Bank of India** (supra), the Supreme Court reiterated that the principles of natural justice cannot be put in a straight jacket formula and then observed:

"Decision of this Court in **S.L. Kapoor vs. Jagmohan & Ors. [(1980) 4 SCC 379]**, whereupon Mr. Rao placed strong reliance to contend that non- observance of principle of natural justice itself causes prejudice or the same should not be read "as it causes difficulty of prejudice", cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinbefore, has undergone a sea change. In view of the decision of this Court in **State Bank of Patiala & Ors. vs. S.K. Sharma [(1996) 3 SCC 364]** and **Rajendra Singh vs. State of M.P. [(1996) 5 SCC 460]**, the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered

a nullity. To the principal doctrine of audi alterem partem, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principal. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straightjacket formula."

In **Ashok Kumar Sonkar v. Union of India** (supra), the Supreme Court held that cancellation of the appellant's appointment on the post of Lecturer in Tridosa Vigyan, IMS, Banaras Hindu University cannot be invalidated on the ground of violation of the rules of natural justice because he did not possess the essential qualifications for appointment on the post and even if notice was given to him, he could not have convinced the competent authority that he was eligible to be appointed as Lecturer in the subject of Tridosa Vigyan. Their lordships of the Supreme Court referred to various judicial pronouncements on the subject and observed:

> "A court of law does not insist on compliance of useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences. Furthermore in this case, the selection of the appellant was illegal. He was not qualified on the cut off date. Being ineligible to be considered for appointment, it would have been a futile exercise to give him an opportunity of being heard."

In the original application filed by him, the petitioner neither pleaded nor any evidence was produced by him to show that his cause had been prejudiced on account of non-recording of detailed reasons by the disciplinary authority. Therefore, the Tribunal did not commit any illegality by refusing to entertain this plea.

The petitioner's contention that one of the witness cited by the department had not been examined and, on that account, his defence had been prejudiced was considered and rejected by the Appellate Authority by observing that if the department did not examine that witness, then the petitioner could have summoned him and his failure to do so warrants negation of this plea. The Tribunal approved the view taken by the Appellate Authority and we do not see any reason to disagree. It would have been a different situation if the petitioner had requested the Enquiry Officer to summon the particular witness and the latter had rejected to do so without assigning cogent reasons.

The question which remains to be considered is whether the punishment imposed by the disciplinary authority is wholly disproportionate to the misconduct found proved and the Tribunal committed an error by declining to substitute the same with lesser penalty.

We have given serious thought to this aspect of the matter. Although the Tribunal has not assigned reasons for discarding the petitioner's plea, we are convinced that the present one is not a fit case for invoking the doctrine of proportionality and/or Wednesbury rule. The petitioner is an employee in a disciplined force. He has been found guilty of evading to perform his duties, willful disobedience of the direction given by the superior officers and remaining absent from duty. He has also been found guilty of making unfounded allegations against the superior officers. Therefore, keeping in view the law laid down by the Supreme Court in **B.C. Chaturvedi v. Union of India** (supra), **Union of India v. G.Ganayutham**[49], **Om Kumar v. Union of India**[50] **Regional Manager, U.P. SRTC v. Hoti Lal**[51], **Director General, RPF v. Ch.**

Sai Babu[52], **V. Ramana v. A.P. SRTC**[53], **State of Rajasthan v. Mohd. Ayub Naz**[54], **Commr. of Police v. Syed Hussain**[55], **State of U.P. v. Sheo Shanker Lal Srivastava**[56], **North-Eastern Karnataka Rt. Corpn. v. Ashappa**[57], **General Manager, Appellate Authority,** and **Bank of India v. Mohd.Nizamuddin**[58], we do not find any justification to tamper with the discretion exercised by the competent authority to impose the penalty of reduction of pay by five stages with future effect.

No other point has been argued.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP No.10924 of 2007 filed by the petitioner for fixing a date for early hearing of the writ petition is disposed of as infructuous.

G.S.SINGHVI, CJ

April 25, 2007

C.V.NAGARJUNA REDDY, J

Note:
Registry to mark L.R. copy
(By order)
svs

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[1] AIR 1964 SC 506
[2] AIR 1963 SC 779
[3] AIR 1963 SC 1723
[4] AIR 1965 SC 1103
[5] AIR 1975 SC 2151
[6] AIR 1964 SC 477

[7] (1995) 6 SCC 749
[8] (1999) 1 SCC 759
[9] AIR 1961 SC 1669
[10] AIR 1966 SC 671
[11] AIR 1967 SC 1606
[12] AIR 1970 1302
[13] AIR 1971 SC 862
[14] AIR 1976 SC 437
[15] AIR 1976 SC 1785
[16] AIR 1990 SC 1984
[17] (2000) 7 SCC 668
[18] (2004) 1 SCC 547
[19] (2004) 5 SCC 568
[20] (2004) 5 SCC 573
[21] (2004) 7 SCC 431
[22] (2005) 5 SCC 75
[23] (2005) 9 SCC 425
[24] AIR 1970 Gujarat 1
[25] (1969) 3 SCC 392
[26] (1976) 3 SCC 574
[27] (1980) 3 SCC 304
[28] (1984) 1 SCC 43
[29] (1984) 3 SCC 295
[30] (1986) 3 SCC 229
[31] (1987) Suppl. SCC 518
[32] (1993) 4 SCC 727
[33] (1994) 4 SCC 422
[34] (1996) 3 SCC 364
[35] (1996) 6 SCC 415
[36] (1998) 6 SCC 651
[37] (1999) SCC (L&S) 620
[38] (2001) 6 SCC 392
[39] (2003) 11 SCC 734
[40] (2003) 3 SCC 443
[41] (2003) 4 SCC 557
[42] (2004) 1 SCC 281
[43] (2005) 2 SCC 237
[44] (2005) 3 SCC 409

[45] (2006) 8 SCC 647

[46] (2006) 8 SCC 776

[47] (1991) 1 SCC 588

[48] (1988) 3 SCC 600

[49] (1997) 7 SCC 463

[50] (2001) 2 SCC 386

[51] (2003) 3 SCC 605

[52] (2003) 4 SCC 331

[53] (2005) 7 SCC 338

[54] (2006) 1 SCC 589

[55] (2006) 3 SCC 173

[56] (2006) 3 SCC 276

[57] (2006) 5 SCC 137

[58] (2006) 7 SCC 410